IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
S.B. Civil Writ Petition No.9546/02
Benda Amtek Ltd. Vs. State of Raj. & Ors.

Date of Order :: 23rd July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Kapil Mathur, Advocate for petitioner.
Shri S.N. Gupta, Deputy Government Advocate

The petitioner has challenged the seizure memo dated 11.12.2002 and has questioned validity of the demand of Rs.25,000/- for release of his vehicle which is a mini truck. Vehicle of the petitioner was seized because the authorization of his national permit on the strength of which he was plying the same in the territory of Rajasthan had expired on 9.12.2002. This Court while issuing notice to the respondents by order dated 19.12.2002 directed release of the vehicle

considering the fact that petitioner had already deposited the tax for authorization of national permit, subject to the petitioner furnishing solvent security equal to the amount of value of the vehicle.

I have heard Shri Kapil Mathur and Shri S.N. Gupta, the learned Deputy Government Advocate for the State.

Shri Kapil Mathur, the learned counsel for the petitioner argued that petitioner had all the intentions to abide by the laws on the subject and had deposited the amount of tax for the State of Haryana, State of Rajasthan, State of U.P. and Union Territory of Chandigarh. He argued that the authorization of vehicle in the State of Rajasthan was valid as on the date of its seizure. It was argued that demand of Rs.25,000/- raised by the

respondents was arbitrary and illegal. Authorization of the vehicle was valid upto 9.12.2002 and the petitioner had already deposited the amount of tax on 11.12.2002. Seizure of the vehicle was also made on 11.12.2002 at 4.00 PM which was after the deposit of tax. It was submitted that this was only technical breach of the rule in the sense that the petitioner did not have the authorization when the vehicle was checked, but in fact the tax amount had been deposited. It was due to lapse on the part of the transport authorities of Gurgaon who did not issue the authorization. It was therefore prayed that the impugned orders dated 11.12.2002, Annexure-4 and 5 respectively be quashed and set aside.

On the other hand, Shri S.N. Gupta, the learned Deputy Government Advocate for the

State opposed the writ petition and argued that the petitioner could not ply the vehicle unless the due authorization was issued to him. Authorization of national permit had already expired on 9.12.2002 and the petitioner had no valid authorization when the vehicle was checked on 11.12.2002. According to Section 87(2) of the Central Motor Vehicle Rules, 1989 valid authorization is granted by the concerning State only after payment of composite fee / tax. In this case, composite tax of State of Rajasthan was deposited on 11.12.2002 and therefore authorization was renewed w.e.f. 11.12.2002. There was therefore no authorization on 10.12.2002. Fresh permit was issued on 14.2.2002. The petitioner was therefore liable to pay composite tax of Rs.5,000/- and four times penalty in the sum of Rs.20,000/-. While referring to

Section 6 of the Rajasthan Motor Vehicle Taxation Act, 1951, it was argued that in no case penalty more than double the amount of tax is required to be paid and if the driver of the vehicle of other State plies in State of Rajasthan without paying the tax leviable under the Act, the defaulter shall be liable to pay in addition to the tax, a penalty which would be not less than four times the due amount of tax. This penalty could have been only equal to the amount of tax due provided the petitioner had a valid authorization certificate with national permit. He argued that the petitioner had alternative remedy of appeal before the State Transport Appellate Tribunal under Section 14 of the Motor Vehicle Taxation Act. The writ petition directly against the order of assessment and penalty is therefore not

maintainable.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record.

While on the one hand, the respondents are raising objection about the maintainability of this writ petition on the ground that the impugned order of seizure and levy of penalty is open to challenge in the alternative remedy of appeal under Section 14 of the Rajasthan Motor Vehicles Taxation Act, 1951 before the State Transport Appellate Tribunal. On the other hand, they also contested the matter on merits. Core of the controversy lies in the fact whether the petitioner had already deposited the amount of tax as on the date and the time when his vehicle was checked and seized i.e. at 4.00 PM on

11.12.2002. The petitioner has asserted before this Court that the petitioner had already deposited the amount of tax on 11.12.2002 itself with the transport authorities at Gurgaon and only thereafter had plied the vehicle in the State of Rajasthan but it was owning to the lapses on the part of such authorities that he was not issued renewed authorization for permit and which is why it could not be produced at the time of checking of the vehicle. The petitioner has however not produced any proof of the fact that he had actually deposited the amount of tax on 11.12.2002 and if so at what time. All these are factual controversies can be better appreciated by appellate forum created by the legislature in the tax statute itself. Even otherwise, when one party asserts a fact and other party denies

the same, it becomes a disputed question of fact and this Court in its writ jurisdiction cannot possibly determine such disputed questions of facts. It would be therefore appropriate for the petitioner to approach the appellate authority and produce before it as to on which date and on what time it deposited the tax with the transport authorities at Gurgaon. This Court while issuing notice to the respondents by its interim order dated 19.12.02 directed for release of the vehicle in question on petitioner's furnishing solvent security equal to the amount of vehicle. It would be therefore appropriate to relegate the petitioner to the remedy of appeal while extending the effect and operation of that interim order co-terminus with the decision of such appeal. While therefore not entertaining

the writ petition, I set the petitioner at liberty to approach the appellate authority aforesaid within 45 days from the date of receipt of certified copy of this judgment and interim order passed by this Court on 19.12.2002 shall remain operative till disposal of that appeal. In the event of the petitioner not availing the remedy of appeal within the aforesaid period, the said order would lapse.

The writ petition is accordingly disposed of with the aforesaid directions though with no order as to costs.

(Mohammad Rafiq),J.

RS/-